



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

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June 20, 2013

Nikz Enterprises, Inc.
c/o Hussein Nikzad
4673 Shadyside Lane
Morgantown, WV 26508

**RE: V13-18 and V13-23 / Shoney's / 9 Sterling Drive
Tax Map 31, part of former Parcel 107**

Dear Nikzad,

This letter is to notify you of the decision made by the Board of Zoning Appeals concerning the above referenced variance petitions for variance relief from Article 1353.07 and Article 1367.08 as they related to cladding materials and parking lot landscaping requirements respectively.

The decision is as follows:

Board of Zoning Appeals, June 19, 2013:

1. Each of the Findings of Fact was found in the positive for Case No. V13-18 and Case No. V13-23 stated in Addendum A of this letter.
2. The Board approved Case No. V13-18 under Article 1353.07 with the following conditions:
 - a) That the location, area, and extent of the cultured masonry materials (stone and/or brick) that is illustrated on the elevations submitted with the petitioner's variance application may not be reduced.
 - b) That the EIFS clad facades, to the satisfaction of the Planning Division, must emulate cast concrete on the front and side facades.
3. The Board approved Case No. V13-23 under Article 1367.08(C)(1) with a four-foot variance and relief was granted from developing six-foot landscape buffers along the side and rear of the parking lot as otherwise required under Article 1367.08(C)(2) with the following conditions:
 - a) That the front landscape buffer shall contain the landscape material type and spacing requirements set forth in Article 1367.08(C)(1).
 - b) To promote public welfare and protect property, the following minimum site design modifications must be, to the satisfaction of the Planning Division and City Engineer, incorporated to properly confine and channel the adjoining Sterling Drive traffic aisle from on-site parking spaces:
 - c) A concrete curb with a minimum height of six inches must be developed beginning at the sidewalk to be constructed at the Sterling Drive / Earl Core Road intersection, thence to and including the terminal island located at the site's Sterling Drive entrance.
 - d) The Sterling Drive traffic aisle along the subject site's side boundary must be physically separated from the adjoining parking stalls by a vertical barrier

between 2 ½ feet and 3 ½ feet in height. Design preference is for a decorative guard rail type facility that compliments the architectural design of the principal building and meets best practice standards for same as determined by the City Engineer. Additionally, appropriate low level ground cover landscaping must be incorporated to the greatest extent practicable.

- e) A concrete curb with a minimum height of six inches must be developed along Sterling Drive and the row of seven parking stalls at the rear most portion of the site. Said concrete curb must continue along the outermost sides of the subject row of parking where the terminal islands are otherwise required. The height of the curb along the outermost sides of the subject row of parking may be tapered to ensure access for emergency response and delivery vehicles provided the outermost parking stalls are properly confined so that parked vehicles do not encroach into or obstruct adjoining driveway entrances and related aisles.
- f) The Sterling Drive traffic aisle along the subject site's rear boundary must be physically separated from the adjoining row of seven parking stalls by a vertical barrier between 2 ½ feet and 3 ½ feet in height. Given the more limited space compared to the subject site's side boundary along Sterling Drive, a bollard and chain design may be developed provided the facility meets best practice standards for same as determined by the City Engineer.

These decisions may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

The above referenced approvals are set to expire in twelve (12) months unless you can demonstrate that they have been activated as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board. Please note that building permits must be obtained prior to the commencement of work for which variance relief was granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving your plans review and permitting needs.

Respectfully,

A handwritten signature in cursive script, reading "Stacy Hollar".

Stacy Hollar
Executive Secretary
shollar@cityofmorgantownwv.gov

ADDENDUM A – Approved Findings of Fact

V13-18 / Shoney's / 9 Sterling Drive

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

According to the petitioner, the design of this facility is controlled by Shoney's Corporate Headquarters operating with narrow branding standards. The Board's condition requiring a minimum extent of cultured masonry cladding materials and that EIFS cladding be designed and finished to emulate cast concrete appropriately protects, preserves, and furthers the intent of ensuring quality and contributing cladding design.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The majority the structures within the immediate B-5 District utilize cladding materials that are not included on the permitted use including EIFS, cultured masonry materials, ornamental concrete block, etc.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The appearance of the proposed exterior material appears to fits contextually within this vicinity and should add to the aesthetics created by adjacent properties.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

This variance has no negative impact on the land use of this vicinity or traffic flow of the public streets. The appearance of this exterior finish is widely accepted and will not affect the market values of this vicinity particularly when Shoney's has stringent guidelines regarding exterior aesthetics.

ADDENDUM A – Approved Findings of Fact

V13-23 / Shoney's / 9 Sterling Drive

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The width and geometry of the site and necessary design provisions for the access of emergency/fire vehicles in and around this facility requires traffic routes with dimensions beyond the minimum requirements. This significantly inhibits the ability to allow for buffer zones at the side and rear of the site along with a full 10'-0" buffer zone at the site's frontage. It also prevents the installation of terminal islands above that shown without considerable reduction in the number of parking spaces which are already at the minimum required.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The variance is necessary to meet the parking and traffic flow needs of the business as well as public safety. Furthermore, other properties within the vicinity uphold the spirit and intent without meeting the exact specifications of the zoning requirements such as buffer zones and terminal islands.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Maintaining a frontage buffer and providing terminal islands at the maximum sizes available on the site meets the spirit and intent of the requirement without reducing the parking spaces below the minimum required. This upholds the landscape aesthetics created by adjacent properties. These variances are contained within the site itself and do not negatively affect surrounding property owners. The Board's condition requiring curbs and vertically facilities to physically separate and channel the Sterling Drive traffic aisle from adjoining on-site parking stalls is intended to promote the public welfare and protect property.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The landscaping will uphold the spirit and intent of the requirement within the constraints of the site and will not compromise; in fact will add to, the look and feel of the adjacent properties. This variance does not obstruct or hinder the traffic flow of the public streets.